

UNITED STATES OF AMERICA  
BEFORE THE NATIONAL LABOR RELATIONS BOARD  
Eighteenth Region

ST. ALEXIUS MEDICAL CENTER

Employer

and

UNITED FOOD AND COMMERCIAL WORKERS,  
LOCAL NO. 1116

Petitioner

Case 18-RC-16613

**DECISION AND DIRECTION OF ELECTION**

Upon a petition duly filed under Section 9(c) of the National Labor Relations Act, as amended, a hearing was held before a hearing officer of the National Labor Relations Board.

Pursuant to the provisions of Section 3(b) of the Act, the Board has delegated its authority in this proceeding to the undersigned.

Upon the entire record in this proceeding, the undersigned finds:

1. The hearing officer's rulings made at the hearing are free from prejudicial error and are hereby affirmed.
2. The Employer is engaged in commerce within the meaning of the Act, and it will effectuate the purposes of the Act to assert jurisdiction herein.<sup>1</sup>

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<sup>1</sup> The Employer, St. Alexius Medical Center, is a North Dakota corporation engaged in the operation of an acute-care hospital at its Bismarck, North Dakota facility. During the past 12 months, a representative period, the Employer's gross revenues exceeded \$250,000, and the Employer purchased and received at its Bismarck, North Dakota facility goods and services valued in excess of \$50,000 from points located directly outside the State of North Dakota.

3. The labor organization involved claims to represent certain employees of the Employer.

4. A question affecting commerce exists concerning the representation of certain employees of the Employer within the meaning of Section 9(c)(1) and Section 2(6) and (7) of the Act.

5. In its petition, the Petitioner seeks to represent all full-time, part-time, “help out” and PRN registered nurses at the Employer’s Bismarck, North Dakota facility. The parties stipulated to the following specific inclusions at hearing:

All full-time and regular part-time RNs, CCRNs, Nurse Practitioners, CRNAs, Home Health Care RNs, QA/Nurse Reviewers, Telemedicine Nurse Specialist, Mental Health Educator, Point of Care Coordinator, Health Ministry Coordinator, Health Ministry RN, Chief Flight Nurse, Infusion Program RN, Resource Nurse Outpatient, Trauma Nurse Coordinator, Nursing Computer Coordinator, Clinical Educators, Lamaze Instructors, Wound Ostomy Continence, Home Health Care RN/Intake Nurse, Liaison Nurse, Perinatal Educator, ACLS/PALS Coordinator, Diabetic Educator, CAPD Home Patient Coordinator, Aphresis Coordinator, and Help Out RNs who regularly average four hours per week in the thirteen weeks prior to the eligibility date.

The parties stipulated to the following exclusions at hearing:

Home Health Patient Team Coordinators, Home Health District Coordinator and Patient Team Coordinator, Telemedicine Project Director, Team Leader (clinic), Hospice Coordinator, Hemodialysis Coordinator, Cardiac Rehab Program Coordinator, Team Leader Outpatient Behavioral Health, Infection Control Coordinator, OR Controller, Chief Anesthetist, Management Reps., Risk Management Director, Assistant Directors, and Directors.<sup>2</sup>

Two positions located in the operating room (OR) are disputed. The Petitioner asserts that the OR Team Leader (ORTL), Gail Stuberg, and the Clinical Information Coordinator

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<sup>2</sup> At the hearing the parties also stipulated that the following individuals are § 2(11) supervisors and should not be included in the bargaining unit: Tammy Escoutrias, Susan Hunt, Blanche Hammling, Laurel Sullivan, Arlene Gerding, and Hazel Sanders. Later in the hearing, the parties agreed that the two medical auditors, Berena Johnson and Angie Unruh, would vote subject to challenge.

(CIC), Michele Vietz, should be included in the bargaining unit. At the hearing, the Employer contended that inclusion of these two positions is not appropriate, arguing that Stuberg is a § 2(11) supervisor and that Vietz is a § 2(11) supervisor, as well as a confidential employee.

This acute-care hospital is headed by Richard Pschider, the Chief Executive Officer. Director of Human Resources Wanda Pfaff oversees the HR functions of the entire facility. Linda Knodel is Director of Nursing and Assistant Administrator. Myrna Spoon is the Director of Surgical Services in the OR.

The Employer conducts annual appraisals for each nursing department employee. The most recent appraisal period was July 1999, and the next one will occur in July 2000. The appraisal consists of a one-to-one meeting between the employee and her/his supervisor to review the past year's performance and establish performance goals for the upcoming year. Prior to the meeting, the supervisor completes a written evaluation in which point values are assessed for separate job elements. The number of points awarded indicates whether the employee is meeting the job standard, not meeting the job standard or exceeding the job standard. The supervisor collects peer review input as one job element on the evaluation form, but otherwise prepares the evaluation individually. If the total points score is less than 150, a performance improvement plan is developed by the supervisor and the employee and a follow-up performance improvement meeting will be conducted by the supervisor. The form indicates the necessity of an additional Administrator's signature if total points come out below 150 or above 350.

The completed written evaluation is relayed to HR, where it is eventually added to the employee's record. The total points on the evaluation are directly related to whether or not the employee will receive an annual merit raise. The HR Director evaluates which point scores will

garner a raise and what amount the raise will be based on a “corporate performance standard” that includes the hospital’s financial viability and patient satisfaction level. The HR Director then awards merit increases based on a bell curve.

OR Team Leader (ORTL)—Gail Stuberg

The OR Team Leader is an RN who oversees the functions of the other RNs, CSTs (certified surgical technicians or OR techs) and LPNs working in the operating room. Currently one ORTL staffs the OR, but another ORTL position remains open. The ORTL reports to Director of Surgical Services Myrna Spoon.

There is no record evidence regarding the day-to-day responsibilities of the ORTL position. However, the record does not suggest that the ORTL can hire, discipline or fire employees, or effectively recommend any of those actions, and I conclude that the ORTL does not possess any such authority.

Record evidence does indicate that ORTL Stuberg completed written evaluations for at least some OR employees in 1999, including one RN, five CSTs and one LPN. Stuberg signed those forms as “supervisor.” The record also establishes that Stuberg will conduct similar evaluations in the year 2000.

The record evidence also indicates that Stuberg is responsible for assessing probationary employees working in the operating room. For example, Stuberg completed one probationary employee “480 hours transfer form” in 1999. This form indicates that three areas were addressed with the employee: a review of the job description’s performance standards, a performance appraisal and a declaration that the employee had satisfactorily completed basic orientation. According to Director of Nursing Knodel, whose testimony is unrebutted, the ORTL has the sole authority to determine whether or not the probationary employee has met the established goals or

whether extended orientation is needed. If extended orientation is needed, the ORTL will determine what areas require performance improvement.

Clinical Information Coordinator for Surgical Services (CIC)—Michele Vietz

The CIC is an RN who provides computer resources and support for the OR staff. The position is salaried and reports to Director of Surgical Services Spoon. The CIC collects data pertinent to surgical services and prepares reports based on the data that are presented to surgical services management teams. The CIC is ultimately responsible for the accuracy of data entered in the database by the OR schedulers, although the CIC does not supervise the OR schedulers. The CIC is also responsible for instructing new users on the systems the CIC is responsible for, and for acquainting employees with upgrades. The CIC also assists the OR surgery schedulers if they are having problems with the systems.

The CIC works primarily with two computer systems—Aim Care (computerized documentation program for anesthesia) and the Surgery server (scheduling system, intraoperative documentation schedule and personnel information). The CIC does not have access to HR information such as employee disciplinary records, evaluations, and salaries, nor does she have access to company financial records; and no such access is necessary for the CIC to perform her job. On one occasion, however, Vietz did retrieve information regarding on-call hours worked in the OR for the Employer's use in analyzing hours of work in the OR. There is no evidence that the CIC hires, fires, evaluates, disciplines, assigns work to or directs employees in their work, or effectively recommends any such action.

## Conclusions

Based on the foregoing and the record as a whole, I conclude that Operating Room Team Leader Gail Stuberg is a § 2(11) supervisor.

To qualify as a supervisor, it is not necessary that an individual possess all of the powers specified in the Act, as possession of any one of them is sufficient to confer supervisory status. Lakeview Health Center, 308 NLRB 75, 78 (1992). The record in this case is clear that ORTL Stuberg individually gathers and summarizes employee performance data controlling all categories of that evaluation, with the minor exception of one category which requires coworker input. Stuberg then completes the evaluation forms with point scores and personalized comments. Stuberg determines the points awarded, and there is no evidence that points given by her are independently reviewed by any other higher authority. The number of points awarded to an employee will determine the level of merit raise ultimately awarded to the employee by HR. Since Stuberg's evaluation of an employee's performance can lead directly to a tangible reward for the employee, Stuberg exercises § 2(11) supervisory authority. Beverly Enterprises-Massachusetts, Inc., 329 NLRB No. 28 (1999); Hillhaven Kona Healthcare Center, 323 NLRB 1171 (1997); Bayou Manor Health Center, 311 NLRB 955 (1993); Health Care and Retirement Corp., 310 NLRB No. 62 (1993). In these circumstances, I conclude that the Employer has met its burden in establishing that Stuberg is a § 2(11) supervisor. NLRB v. Health Care & Retirement Corporation of America, 114 S.Ct. 1778 (1994).

With regard to CIC Michele Vietz, the record contains no evidence that she is a supervisor within the meaning of § 2(11) of the Act.<sup>3</sup> Therefore, the Employer has failed to meet its burden of establishing that Vietz is ineligible due to supervisory status. Phelps Community Medical Center, 295 NLRB 486, 490 (1989). With regard to the Employer's contention at the hearing (which is not repeated in its post-hearing brief) that Vietz is a confidential employee, the Board applies a narrow test in making determinations as to whether an employee is confidential and, therefore, excluded from a bargaining unit. For example, an employee who prepares statistical data for use by an employer during contract negotiations is not confidential because the clerk cannot determine from the data prepared what policy proposals may result. Inland Steel Co., 308 NLRB 868 (1992); American Radiator Corp., 119 NLRB 1715 (1958). In the instant matter, at most the record establishes that Vietz prepares statistical information related to events in the operating room, except for one occasion when she retrieved data regarding overtime/call pay by the operating room staff, which she turned over without analyzing. Therefore, I conclude that the record fails to support either that Vietz is a confidential employee or a supervisor. I shall, therefore, include the CIC in the bargaining unit.<sup>4</sup>

6. The following employees of the Employer constitute a unit appropriate for the purposes of collective bargaining within the meaning of Section 9(b) of the Act:

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<sup>3</sup> It appears that the Employer's sole evidence is a claim by Vietz that she was a supervisor. Vietz made the claim to HR Director Pfaff to justify her actions in accessing e-mail directed solely at supervisors about one week before the hearing. However, HR Director Pfaff testified that she told Vietz that "[e-mail] is just for supervisors that—you do not have access to that information." (emphasis added)

<sup>4</sup> In its post-hearing brief, the Employer contends for the first time that because Vietz is not involved in patient care, she does not share a community of interest with other RNs. The Employer cites no cases in support of its claim. While the Employer's statement that Vietz does not engage in direct patient care appears correct, I decline to find that she therefore lacks a community of interest with other RNs. I note, for example, that the Employer stipulated to the inclusion of Nursing Computer Coordinator, who presumably also works with computers.

All full-time and regular part-time RNs, CCRNs, Nurse Practitioners, CRNAs, Home Health Care RNs, QA/Nurse Reviewers, Telemedicine Nurse Specialist, Mental Health Educator, Point of Care Coordinator, Health Ministry Coordinator, Health Ministry RN, Chief Flight Nurse, Infusion Program RN, Resource Nurse Outpatient, Trauma Nurse Coordinator, Nursing Computer Coordinator, Clinical Educators, Lamaze Instructors, Wound Ostomy Continence, Home Health Care RN/Intake Nurse, Liaison Nurse, Perinatal Educator, ACLS/PALS Coordinator, Diabetic Educator, CAPD Home Patient Coordinator, Aphresis Coordinator, Clinical Information Coordinator for Surgical Services and Help Out RNs who regularly average four hours per week in the thirteen weeks prior to the eligibility date employed by St. Alexius Hospital, Inc. at its Bismarck, North Dakota facility; excluding Home Health Patient Team Coordinators, Home Health District Coordinator and Patient Team Coordinator, Telemedicine Project Director, Team Leader (clinic), Hospice Coordinator, Hemodialysis Coordinator, Cardiac Rehab Program Coordinator, Team Leader Outpatient Behavioral Health, Infection Control Coordinator, OR Team Leader, OR Controller, Chief Anesthetist, Management Reps., Risk Management Director, Assistant Directors, and Directors, guards and supervisors, as defined by the National Labor Relations Act, as amended, and all other employees.

### **DIRECTION OF ELECTION**<sup>5</sup>

An election by secret ballot will be conducted by the undersigned among the employees in the unit found appropriate at the time and place set forth in the Notice of Election to be issued subsequently, subject to the Board's Rules and Regulations. Eligible to vote are those in the unit who were employed during the payroll period ending immediately preceding the date below, including employees who did not work during that period because they were ill, on vacation or temporarily laid off. Also eligible are employees engaged in an economic strike which commenced less than 12 months before the election date and who retained their status as such during the eligibility period, and their replacements. Those in the military services of the United States may vote if they appear in person at the polls. Ineligible to vote are persons who have quit or been discharged for cause since the designated payroll period, employees engaged in a strike

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<sup>5</sup> Under the provisions of Section 102.67 of the Board's Rules and Regulations, a request for review of this Decision may be filed with the National Labor Relations Board, addressed to the Executive Secretary, 1099 - 14th Street, N.W., Washington, D.C. 20570. This request must be received by the Board in Washington by **April 17, 2000**.



who have been discharged for cause since the commencement thereof and who have not been rehired or reinstated before the election date, and employees engaged in an economic strike which commenced more than 12 months before the election date and who have been permanently replaced.<sup>6</sup>

Those eligible shall vote whether or not they desire to be represented for collective-bargaining purposes by United Food and Commercial Workers, Local No. 1116.

Signed at Minneapolis, Minnesota, this 3<sup>rd</sup> day of April, 2000.

/s/ Ronald M. Sharp

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Ronald M. Sharp, Regional Director  
Eighteenth Region  
National Labor Relations Board

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<sup>6</sup> To ensure that all eligible voters have the opportunity to be informed of the issues in the exercise of their statutory right to vote, all parties to the election should have access to a list of voters and their addresses that may be used to communicate with them. Excelsior Underwear Inc., 156 NLRB 1236 (1966); NLRB v. Wyman-Gordon Co., 394 U.S. 759 (1969). Accordingly, it is directed that two copies of an election eligibility list containing the full names and addresses of all the eligible voters must be filed by the Employer with the Regional Director within seven (7) days of the date of this Decision and Direction of Election. North Macon Health Care Facility, 315 NLRB 359 (1994). The Regional Director shall make the list available to all parties to the election. In order to be timely filed, this list must be received in the Minneapolis Regional Office, Suite 790, Towle Building, 330 Second Avenue South, Minneapolis, MN 55401-2221, on or before **April 10, 2000**. No extension of time to file this list may be granted by the Regional Director except in extraordinary circumstances, nor shall the filing of a request for review operate to stay the filing of such list. Failure to comply with this requirement shall be grounds for setting aside the election whenever proper objections are filed.